IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 2005 of 2007(Y)

CRA.507/2006 of SESSIONS COURT, THALASSERY
CC.233/2004 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, KANNUR

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REVN. PETITIONER:

ANTONY, S/O.VARGHESE
C.NO.2589, BLOCK-10
CENTRL JAIL, KANNUR

BY ADV. SRI.SAJEEV.T.P.

RESPONDENTS:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERLA
ERNAKULAM

BY PUBLIC PROSECUTOR SRI. P. RAVEENDRA BABU

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 06/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

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Crl.R.P. 2005 of 2007

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Dated: 06-12-2007

ORDER

In this revision preferred from the Central Prison, Kannur, the revision petitioner who was the accused in C.C. 233 of 2004 on the file of the J.f.C.M.-I, Kannur for offences punishable under Sections 457, 380 and 461 I.P.C. challenges the conviction entered and the sentence passed concurrently by the courts below for the aforesaid offences.

2. The case of the prosecution can be summarised as follows:-

At about 2 a.m. on 23-5-2001 the accused with the intention of committing theft, committed house breaking by night by breaking open the lock of Sree Sankaracharya Educational Society located in building No. C.W. 2322 of Kannur Municipality and trespassed into the said institution and committed theft of 4 computer Mother Boards, T.O. 64 R-A hard disc processor, four floppy drives, four C.D. drives, four mouses, internet house, one network card, four softwares, C.D. 22, video, CD2, Mobile phone etc. He also committed theft of cash worth Rs. 950/- from the

drawer of the table. The aforesaid properties were altogether worth Rs. 95,000/-. The accused has thereby committed offences punishable under Sections 457, 380 and 461 I.P.C.

3. On the accused pleading not guilty to the charge framed against him by the courts below for the aforementioned offences, the prosecution was permitted to adduce evidence in support of its case. The prosecution altogether examined 8 witnesses as P.Ws 1 to 8 and got marked 5 documents as Ext.P1 to P5 and 6 material objects as MOs 1 to 6. The accused did not adduce any defence evidence when called upon to do so.

4. The learned magistrate, after trial, as per judgment dated 19-09-2006 found the revision petitioner guilty of the offences charged against him and sentenced him to rigorous imprisonment for two years and to pay fine of Rs. 2,500/- and on default to pay the fine to suffer rigorous imprisonment for three months under Sec. 457, rigorous imprisonment for six months under Sec. 461 and rigorous imprisonment for two years and to pay fine of Rs. 2,500/- and on default to pay fine to suffer rigorous imprisonment for three months under Sec. 380 I.P.C. On appeal preferred by the revision petitioner as Crl. (Jail)

Appeal No. 507 of 2006 before the Sessions Court, Thalassery, as per judgment dated 17-2-2007 dismissed the appeal confirming the conviction entered and the sentence passed against the revision petitioner. Hence, this Revision.

5. I heard Adv. Sri. T.P. Sajeev, the learned counsel appearing for the revision petition on State Brief and Adv. Sri. C.M. Nazar, the Public Prosecutor who defended the State.

6. The only point which arises for consideration in this Revision is as to whether the conviction entered and the sentence passed against the revision petitioner are sustainable or not ?

THE POINT

7. Adv. Sri.T.P. Sajeev, the learned counsel appearing for the revision petitioner made the following submissions before me in support of the revision:-

The offence was committed within the limits of the Kannur Police Station. P.W.8, who conducted the investigation was admittedly an officer in-charge of Thalassery Police Station. Going by his evidence, when he questioned the accused it was revealed that the theft was committed within the limits of the Kannur Police Station. Hence, instead of transfering the case to

the Kannur Police Station, the Sub Inspector of Thalassery Police Station himself conducted the investigation for which he had no jurisdiction. The evidence adduced by the prosecution does not conclusively prove the guilt of the accused beyond reasonable doubt.

8. I am afraid that I cannot agree with the above submissions.

9. P.W.1 (Sreejayan) is the proprietor of Sree Sankaracharaya Institute. He gave Ext.P1 F.I. statement on finding that computer parts worth more than rupees one lakh were stolen from the said institute after braking open the door. P.w.2 (Shaju) is an attester to Ext.P2 scene mahazar. P.W.3 (Priya) is a member of the staff of Sree Sankaracharya Institute. She also stated that a theft was committed in the said institute and computer parts were stolen. P.W.4 (Aneesh) is an attester to Ext.P4 seizure mahazar as per which MOs 1 to 3 computers were recovered by P.W.8 the Sub Inspector of Thalassery Police Station at the instance of the accused who took the police party to the place of concealment. P.W.5 (Ramachandran) was the Circle Inspector of Kannur Town Police STation who completed

the investigation and laid the charge against the accused. P.W.6 (Balan) was the head constable of Kannur Town Police station who recorded Ext.P1 F.I. statement given by P.W.1 (Sreejan) and registered Ext.P3 F.I.R. P.W.7 (Abdulkarim) was the Circle Inspector of Kannur Town Police Station who conducted the preliminary investigation in the case. P.W.8 (Sadanandan) was the Sub Inspector of Police, Thalassery who obtained the accused on police custody and recorded the confession statement of the accused and effected the recovery of the material objects. The statement of the accused was that the three computer parts were re-assembled by him in new cabinets and kept for sale in the house where he was formerly residing. Accordingly, on 25-5-2002 the accused led the police party to Lakshmipuram Jayarama Street in Chennai where he went to the first floor of House No. 11 which was kept locked. From the said house three computer parts were seized under Ext.P4 mahazar. The three computer parts which were seen assembled in three cabinets are MOs 1 to 3 which were seized under Ext.P4 mahazar.

10. It is true that the occurrence took place within the

limits of the Kannur Police Station whereas that part of the investigation including the recovery of the computer parts was conducted by P.W.8 the Sub Inspector of Thalassery Police Station who knew that the place of occurrence was within the limits of Kannur Police Station. But that by itself cannot render the investigation conducted by P.W.8 illegal or without jurisdiction. Section 156 Cr.P.C. gives the answer to the problem posed by the learned counsel for the revision petitioner. Section 156 reads as follows.

> *156. Police Officer's power to investigate cognizable cases - (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.*
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> *(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.*
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> *(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.*

*1*1. Thus, even if a police officer who conducts investigation of a cognizable offence has no territorial

jurisdiction to do so, by virtue of sub section 2 of Sec. 156 Cr.P.C. the lack of authority of such officer is not a justifiable issue. Hence, the contention that P.W. 8 had no authority to conduct the investigation is untenable. Moreover, it is well settled that the illegality in investigation cannot affect the jurisdiction of the Magistrate to take congnizance of the offences.

12. The evidence in the case clearly shows that consequent on the confession made by the accused to P.W.8 three of the computer parts (MOs 1 to 3) were seized by P.W.8 from inside three cabinets in which those computer parts were installed. P.Ws 1 and 3 have clearly identified MOs 1 to 3 as the computer parts stolen from Sree Sankaracharya Educational Institute. Since the computer parts were stolen by committing house breaking by night after breaking open into the Sree Sankaracharya Educational Institute and also since the theft was committed from a building, the offences punishable under Sections 380, 457 and 461 I.P.C. have been clearly attracted. The conviction was rightly entered against the revision petitioner.

13. The sentence imposed on the revision petitioner also cannot be said to be excessive or disproportionately harsh having regard to the fact that he is a habitual offender. This Revision is accordingly dismissed confirming the conviction entered and the sentence passed against the revision petitioner.

V. RAMKUMAR,
(JUDGE)

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